approaches" to determine name variances. Presentation, FCC-USAC Joint Training Event, In-Depth Data Validations, June 19, 2012, at 11. USAC does not disclose what "lexical and phonetic approaches" are used, nor does it state whether any manual processes or judgments are used to identify or resolve conflicts.[8] USAC also does not state how, if at all, other subscriber information (date of birth, last four digits of SSN) the Commission has required to be collected will be used in examining accounts and determining whether any are duplicates. Moreover, nothing in the IDV decisions explains how USAC concluded that accounts with variances in information were deemed to constitute a duplicate.

B. USAC Could Not Have Concluded That the Listed Accounts Were Duplicates Without Applying an Additional Standard

None of the FCC's orders provides sufficient information for USAC to make the intra-company duplicate findings that it rendered in the December 2013 IDVs. The FCC's IDV guidance to USAC only addresses situations where the relevant information is an exact match (*i.e.,* involves the "same name" and "same address"). Critically, this now-dated guidance includes no instruction as to the consideration of other required subscriber information, including date of birth and SSN information. Because the accounts found by USAC to be intra-company duplicates involve differences in customer account information, USAC was unable to lawfully conclude based solely on the FCC's guidance – or otherwise in a manner consistent with Lifeline program rules – that the accounts were duplicates.

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[8] Most recently, the WCB has proposed audit procedures for the Lifeline Biennial Audits that would require independent auditors to define a "subscriber" as having a match of name, date of birth **and** last four digits of the SSN. *See Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan*, Public Notice, DA 13-2016, at Attachment 2, p. 15 (rel. Sept. 30, 2013) ("Lifeline Biennial Audit Plan Notice") (emphasis added). Moreover, independent auditors are instructed to conduct this review "using computer-assisted audit techniques," suggesting that an electronic data matching is an acceptable duplicate screening process. *Id.*

Each of the duplicate accounts identified by USAC contains one or more differences in FCC-mandated subscriber information. In all instances, the alleged duplicate accounts contain some variation in the customer name and address data. All of the accounts contain differences in subscriber information fields, including differences in last name, date of birth and SSN information that would result in these accounts not being rejected as duplicate accounts by the NLAD as it is presently set for seeding. For example, USAC identified accounts where the customer name differed and the account contained a difference in customer date of birth, last four digits of SSN, or both. USAC also identified accounts with address differences and a difference in date of birth, last four digits of SSN, or both. These accounts do not fit within the "same name, same address" category specified in the IDV Guidance Letter. In order to address these accounts, USAC would have had to apply an additional standard to determine whether, despite the differences in information, the account was sufficiently the same to constitute a "same name" or "same address." That standard, of course, is not contained in the FCC's guidance to USAC.

Similarly, the FCC's guidance is not helpful in determining how other differences in subscriber information may be ignored or disregarded so as to reach the conclusion that two accounts belong to the same individual. The IDV Guidance Letter was issued before the Commission amended its rules in the 2012 Lifeline Reform Order to require ETCs to collect identifying information such as date of birth and the last four digits of SSN. The IDV Guidance Letter only discusses two pieces of information that an ETC collects – customer name and customer address. None of the FCC orders provide guidance on how the additional information that ETCs now are required to collect – such as date of birth and SSN information – are to be considered to determine whether a similar customer name and/or address represents one or two

individuals. Here again, USAC appears to have impermissibly filled in the gap in guidance with its own (undisclosed) standard that appears to simply disregard differences in date of birth and SSN information. A standard that ignores such information cannot be squared with Commission's requirement to collect such information.

These problems demonstrate the core deficiency in the Commission's "duplicates" guidance to date. Electronic screening techniques typically are used to identify accounts with identical information. Electronic screening techniques are not particularly effective in identifying or resolving other variations that may appear in subscriber data. Names may have different spellings or different suffixes, such as "Sr." or "Jr." Addresses may have different house numbers, apartments and unit numbers. For others, the name and/or address information may be the same, but the SSN and/or date of birth information may differ.[9] Every one of these variances requires a rule to resolve whether the differences indicate a separate subscriber account or a duplicate. The FCC's guidance to date, however, does not supply a rule for addressing such differences.

C. The FCC Must Clarify its Guidance for Evaluating Duplicates

In order for USAC and the industry to address these types of differences, additional guidance from the Commission is necessary. Easy Wireless respectfully submits that this guidance should be provided promptly.

The Commission must clarify that, under existing policy, a Lifeline account may be deemed a duplicate based on subscriber provided information only if all of the mandated

[9] Under the Commission's rules, June 2012 and later accounts contain additional subscriber information fields (*i.e.,* date of birth and last four digits of SSN) not required to be collected upon enrollment for accounts established prior to that date. These discrepancies make it impossible to compare the two accounts on an apples-to-apples basis. *See* Lifeline Biennial Audit Plan Notice, at Attachment 2, p. 18 n. 20 (discarding pre-June 2012 accounts from the process review portion of the audit).

subscriber identification information matches. The Commission must instruct USAC to cease classifying as a "duplicate" accounts where the subscriber data is similar, but not identical. Unless and until the Commission modifies its rules to establish standards for addressing similar, but not identical, account information, USAC simply cannot conclude based on available information that accounts with different subscriber information are duplicates.

If the Commission modifies its rules to address such similar accounts, its guidance should be as specific as possible in identifying which types of variances are significant and which are not. If, for example, the Commission requires Lifeline ETCs to collect name, date of birth and last four digits of SSN, should all three of those pieces of information be an exact match in order to conclude that the person is the "same individual?"[10] If some variances in these data points will be disregarded, the Commission should identify which ones those are.[11]

Similarly, with respect to addresses, the Commission would need to identify how conflicting information should be resolved. For example, if two accounts have different apartment numbers (Apt. 101, Apt. 304, etc.), is a Lifeline ETC permitted to conclude that this information, by itself, represents a different household?[12] Similarly, if one address lacks a unit

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[10] This is the standard proposed for the Lifeline Biennial Audits. *See* Lifeline Biennial Audit Plan Notice, at Attachment 2, p. 18.

[11] As of this date, the NLAD's duplicate detection logic differs from that proposed for Biennial Audits in that differences in first names would be disregarded.

[12] Other carriers have noted the same concerns. In their comments on the Lifeline Biennial Audit Plan, Verizon and Verizon Wireless reported:

> In Verizon's experience, USAC sometimes identifies subscribers as receiving duplicate support when, in fact, they do not. For example, USAC has identified persons with the same last name who live in the same apartment building (i.e., who have the same street address) as receiving duplicate support, when those persons had different first names and lived in different apartments. In other words, USAC sometimes identifies customers as duplicates when they actually appear to be separate, eligible subscribers.

Comments of Verizon and Verizon Wireless, Lifeline Biennial Audit Plan, WC Docket No. 11-42, at 12-13 (filed Dec. 13, 2013).

number while the other contains one, can the Lifeline ETC treat these as different households?[13] If not, the FCC should specify when such accounts involve the "same address" and when they do not.

The development of such "conflict resolution" rules will be helpful in a number of respects. First, such rules will of course provide greater predictability to the low-income enrollment process. Second, such rules will allow Lifeline ETCs to develop methods and procedures to incorporate the conflict resolution into their enrollment processes. ETCs must be able to develop real-time electronic systems to identify such conflicts and resolve them according to the rule. The result of such systems would be fast and reliable decisions regarding eligibility of subscribers and fewer actual duplicates that successfully make their way through the process.

Third, standards for the resolution of such subscriber information differences will help to ensure uniform and non-discriminatory application of the FCC's rules. For example, with no standards for resolving such differences during an IDV, USAC might pick and choose which accounts with similar but not identical information it considers to be "duplicates" in an inconsistent manner. Worse, there would be nothing to prevent USAC from applying a stricter interpretation of duplicates against a disfavored ETC or based on some other reason unrelated to the IDV review itself.[14] Whether a duplicate is found should never depend on which staffer reviews the information and/or which ETCs are or are not in favor at the particular time.

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[13] In such instances, the differences may represent a spare room for rent or a garage apartment. Both such examples would constitute different households under Lifeline program rules.

[14] Discretionary scrutiny also could implicate the rights of Lifeline subscribers themselves. Without definitive rules, it is possible that customers in certain ethnic groups could face additional scrutiny and, ultimately, de-enrollment due to what may constitute impermissible profiling or disparate impact.

III. USAC'S IDV FINDINGS MUST BE VACATED

Based solely on the FCC rules and guidance to date, USAC could not have determined whether the particular accounts it identified as intra-company duplicates represent prohibited "duplicative support." A review of the December 2013 IDV data shows that none of the accounts contain identical name and address information. Thus, these accounts cannot satisfy the requirement in the IDV Guidance Letter that the accounts be either "different individuals, same address" or "same name, same address." *See* Confidential Exhibit 1 and Confidential Exhibit 2. Accordingly, there is no basis on which USAC may conclude that the small number of accounts identified in the December 2013 IDVs are intra-company duplicates. For these reasons, the USAC findings must be vacated. The Bureau cannot require ETCs to use date of birth and SSN information in screening for duplicates and then allow USAC to apply a different standard that ignores date of birth and SSN information, which the Commission has said is essential for duplicate detection. *See supra* note 4.

The December 2013 IDVs stated that USAC would net the amount identified in the IDVs (**BEGIN CONFIDENTIAL** **END CONFIDENTIAL** total) against the company's low-income support payment disbursed at the end of January 2014. In addition, Easy Wireless has de-enrolled the Lifeline subscribers that USAC identified as intra-company duplicates.

Although the December 2013 IDV findings regarding intra-company duplicates are not supported and must be vacated, Easy Wireless clarifies that it is not seeking reversal of either the reimbursement or de-enrollment of the identified customers in this instance. That is, despite this request for review, Easy Wireless voluntarily agrees in this instance to treat the alleged duplicates as though they are duplicates and to forego the Lifeline support that USAC seeks to withhold from the January 2014 disbursements. Further, despite this request for review, Easy

Wireless voluntarily de-enrolled the subscribers that were identified as duplicates. Easy Wireless simply seeks a ruling vacating USAC's findings of intra-company duplicates.

Notwithstanding the foregoing, the Commission should address the unreasonable and disturbing discrepancy between an ETC's right to appeal these USAC findings within 60 days and the requirement contained in these and other USAC IDV findings to de-enroll customers within five business days.[15] An ETC may want to challenge the order to de-enroll some or all of the alleged duplicate subscribers, but cannot reasonably be expected to make that determination within five business days. The Commission already has set 60 days as the appropriate timeframe in which that assessment should be made.[16] Until the Commission addresses this inconsistency in ETC response deadlines, it effectively is denying ETCs a full right of appeal and it is doing so without regard to the adverse impact that this timing disconnect has on eligible consumers enrolled in the Lifeline program. Currently, subscribers that are not duplicates are likely to be de-enrolled and lose their essential Lifeline service because USAC has failed to follow FCC guidance regarding identifying duplicates, the Bureau has not yet acted to curb USAC's conduct or to address the 55 day gap between the de-enrollment and appeal deadlines. While Easy Wireless generally supports efforts to curb waste, fraud and abuse in the Lifeline program, those efforts should not compromise the rights of ETCs to due process or the rights of consumers who are eligible and who have followed program rules.

IV. THE FCC SHOULD ESTABLISH A SAFE HARBOR FOR LIFELINE PROVIDERS TO DETECT DUPLICATES

In addition to providing the guidance described above and vacating the unsupported December 2013 IDV findings regarding intra-company duplicates, the Commission should

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[15] *See* 47 C.F.R. § 54.405(e)(2).

[16] *See* 47 C.F.R. § 54.720(a).

establish prospective standards for Lifeline ETCs to use for duplicate screening. Specifically, Easy Wireless requests that the FCC establish a safe harbor reflecting a minimum level of due diligence that a Lifeline ETC should employ to screen for duplicates. This safe harbor would work like the safe harbor the FCC applies to wholesale telecommunications carriers in determining whether a customer's services are exempt from USF contribution obligations because they are purchased for resale.[17] That is, so long as a Lifeline ETC employed the safe harbor practices, it would not face retroactive liability or forfeiture penalties for any duplicates that might nevertheless evade detection.

A. The FCC Has Not Established a Standard of Conduct for Detecting Duplicates

The FCC's Lifeline rules do not provide instruction to Lifeline ETCs regarding the actions needed to be taken in order to detect duplicates (however the term might be defined). The Lifeline program rules are extensive and detailed. 47 C.F.R. §§ 54.400 *et seq.* The goal of many rules undoubtedly is to help prevent subsidies being paid for ineligible subscriber accounts. However, the Lifeline regulatory framework is a process-based, not a results-based, framework. 47 C.F.R. §§ 54.405, 54.407, 54.410, 54.417, 54.222. And while ETCs must "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services," this rule leaves it to the ETC to determine what policies and procedures to implement. 47 C.F.R. § 54.410(a). Because no standard of conduct has been set, it is impossible for an ETC to know at this time what actions will be sufficient for screening for duplicates.

The need for such a standard is critical. Nowhere in the Lifeline program is perfection in fraud detection required. For example, the FCC itself is not held to a standard of perfection in

[17] *In Re Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122, Order, 27 FCC Rcd 13780 (rel. Nov. 5, 2012) (the "Wholesaler-Reseller Clarification Order").

administering the Lifeline program. The IPERA sets forth an acceptable error rate for federal executive agencies managing disbursement programs. *Improper Payments Elimination and Recovery Act of 2010*, P.L. 111-204 (Jul. 22, 2010); 31 U.S.C. § 3321, note. Under the IPERA, federal agencies are required to conduct risk assessments of programs the agencies administer and identify programs susceptible to "significant improper payments." *Id.* "[S]ignificant improper payments" under the IPERA are, for fiscal years prior to September 2012, those that exceed either (1) 2.5% of program outlays and $10 million of all program payments or (2) payments of $100 million.[18] The IPERA's establishment of additional compliance requirements that are applicable only to those improper payments defined as significant[19] is a tacit acknowledgement by Congress that it is not reasonable to expect that a federal agency disbursement program will ever be completely error-free.

Nor will Lifeline ETCs be held to a standard of perfection in the upcoming biennial audits that must be conducted by ETCs that receive $5 million or more in Lifeline support in a year. The WCB released draft standards for the audits on September 30, 2013. *See Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan*, Public Notice, DA 13-2016 (rel. Sept. 30, 2013) ("Lifeline Biennial Audit Plan Notice"). With respect to an ETC's procedures for determining subscriber eligibility (Objective III), the Biennial Audit Plan proposes a reasonable standard for a significant error rate rather than an expectation of 100% perfection. In the fieldwork test procedures for examination of the ETC's policies and procedures, the Biennial Audit Plan directs auditors to randomly select at least 100 subscribers from the ETC's subscriber list for testing. Testing would examine the eligibility information

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[18] The IPERA's 2.5% significant improper payment threshold decreases to 1.5% for fiscal years beginning after September 30, 2012. IPERA §§ 2(a)(3)(A)(ii)(I).

[19] *See e.g.*, IPERA § 2(c).

collected on subscriber certification forms to ensure its completeness. *Id.*, Attachment 2 at 17-18. This analysis, however, does not require that certification forms be complete in every single instance. Instead, auditors are directed to test the first 50 subscribers randomly sampled. If – and only if – the auditor finds an error rate of more than 5% during its examination of the first 50 forms, then the auditor proceeds with a more in-depth assessment and examines the remaining selected subscribers. *Id.*[20] Thus, the Plan adopts thresholds that recognize a certain level of error is inevitable and does not threaten program objectives.

These standards (and others like them) recognize that a certain level of errors will occur regardless of the robustness of the procedures that are followed. Such errors are inevitable. Because of this, it is critical that an ETC know what procedures it may follow to insulate itself from potential liability for duplicates that nevertheless may escape detection. Such protection can come from the establishment of a safe harbor for duplicate prevention.

Safe harbors are used by the Commission for precisely this purpose. For example, in the context of Universal Service Fund contributions, the Commission has a long-established a safe harbor for wholesale carriers to use in determining whether its customers are resellers. *See* 2013 Form 499-A, Instructions at 22-23. Under that safe harbor, if a wholesale provider follows the guidance provided in the FCC's instructions, it will be deemed to be in compliance with FCC rules. Wholesaler-Reseller Clarification Order, ¶ 51 ("A wholesale provider that complies with all of the guidance in the Form 499-A instructions will be afforded a "safe harbor"-*i.e.*, that provider will be deemed to have demonstrated a reasonable expectation"). Critically, this safe harbor applies (and the wholesale provider is not required to make USF contributions on the

[20] Notably, for purposes of this examination, auditors are instructed to disregard forms collected from subscribers before the effective date of the most recent Lifeline reforms, in June 2012. Lifeline Biennial Audit Plan Notice, Attachment 2 at 18 n. 20.

revenues) even if the reseller ultimately fails to make its required contributions on the resold revenues. That is, even if an error actually occurs, the wholesale provider is absolved of liability if it has followed the safe harbor procedures. *Id.*, ¶ 38.

B. The Commission Should Establish a Safe Harbor

Easy Wireless requests that the Commission establish a safe harbor for Lifeline providers that engage in reasonable and diligent duplicate screening methods and procedures. Under such a safe harbor, a Lifeline provider that has conducted appropriate due diligence to identify duplicate subscribers will not be liable for retroactive reimbursements to the Universal Service Fund and will not be subject to forfeitures or other penalties if USAC or the FCC, through additional scrutiny, determines that an account is a duplicate.

The safe harbor should identify the steps a Lifeline ETC should take in order to check for duplicate enrollments in its own records. Easy Wireless respectfully suggests that these steps should be satisfied by evidence that the ETC (1) has obtained a valid certification from the subscriber attesting, under penalty of perjury, that the subscriber is not receiving another Lifeline-supported service, *and* (2) has submitted the subscriber's record to an electronic screening process using the NLAD (when available) or, where the NLAD is not available, using a state database, a third-party database of subscribers or the ETC's own subscriber records.

The first element of this proposed safe harbor flows from the 2012 Lifeline reforms. Under those reforms, the Commission requires Lifeline ETCs to obtain certifications from prospective customers that contain certain required information. Among such information, these forms must inform customers that:

- Only one Lifeline service is available per household;
- A household is not permitted to receive Lifeline benefits from multiple providers, and;

- Violation of the one-per-household limitation constitutes a subscriber's violation of the Commission's rules and will result in the subscriber's de-enrollment from the program.

47 C.F.R. § 54.410(d)(1). Further, the rules require that the subscriber certify under penalty of perjury that:

- The subscriber meets the income-based or program-based eligibility criteria for Lifeline benefits;
- The subscriber will notify the carrier within 30 days if for any reason he or she "is receiving more than one Lifeline benefit";
- The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service; and
- The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law.

47 C.F.R. § 54.410(d)(3).

Receipt by a Lifeline ETC of a certification from each relevant subscriber that satisfies Section 54.410(d) of the rules should satisfy the first prong of the safe harbor.

The second prong – electronic screening of subscriber records – should be satisfied by evidence that the Lifeline ETC follows acceptable procedures to check for duplicates prior to enrollment and submission of a request for reimbursement from the Fund. Where the NLAD or a state database is available, the ETC should be required to screen using that database in order to benefit from the safe harbor. Absent the NLAD or a state database, the ETC should have the option to use a third-party database or its own database of subscribers to conduct a duplicates check.

Importantly, this prong of the safe harbor would be satisfied by the use of an electronic screening process. If the records match using the logic employed in the eligibility database, then

the carrier must treat the subscriber as a duplicate subject to exceptions.[21] If the records do not match using the logic employed in the eligibility database, however, then the subscriber is not a duplicate for purposes of the safe harbor.

Provided that the Lifeline ETC can demonstrate compliance with both prongs of the safe harbor – (1) receipt of a certification form satisfying Section 54.410(d) and (2) electronic screening through the NLAD or other appropriate database – then the ETC would not be subject to retroactive liability for enrollment of the subscriber. If, after additional review via an IDV or otherwise, USAC or the FCC concludes that an account is a duplicate, the Lifeline ETC would be required to de-enroll the account as instructed. However, the Lifeline ETC would not be required to return any Lifeline benefits received prior to the determination that the account is ineligible. More importantly, the Lifeline ETC would not be subject to any potential fines or penalties for having enrolled the subscriber or having requested reimbursement for the subscriber prior to the USAC or FCC determination. As with the safe harbor for wholesale providers in the USF contributions process, compliance with the safe harbor procedures would be sufficient to discharge the Lifeline ETC's duties to check for duplicate enrollments.

CONCLUSION

For the reasons explained above, Easy Wireless requests that the Commission vacate the December 2013 IDV findings regarding intra-company duplicates. In so doing, Easy Wireless requests that the Commission further clarify that under existing policy, only accounts with exact matching information in all required fields may be deemed to be duplicates based on available

[21] In such an instance, an ETC could obtain additional evidence in order to demonstrate the subscriber's eligibility for a Lifeline benefit. This additional evidence may consist of an Independent Economic Household form or other evidence demonstrating that the subscriber is not a duplicate.

subscriber information. Finally, Easy Wireless requests that the Commission establish a safe harbor for Lifeline providers to follow in the future when checking for duplicate enrollments.

These actions will protect and promote the efficient administration of the Lifeline program. Commission action to clarify its duplicates policy, correct the erroneous USAC findings and to establish a safe harbor for duplicate detection can restore balance to the program. By taking the actions above, the Commission will increase compliance with the Lifeline program's requirements, will promote responsible Lifeline practices and will further the policy goals of the program.

Respectfully submitted,

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CONFIDENTIAL EXHIBIT 1
(REDACTED)

CONFIDENTIAL EXHIBIT 2
(REDACTED)